



**COMBINED DECLARATION OF E.J. ASBURUY III AND DAVID WILSON**  
**IN SUPPORT OF PETITION UNDER 37 CFR 1.182 AND MPEP 402.10**  
**APPOINTMENT/REVOCATION BY LESS THAN ALL APPLICANTS OR OWNERS**

1. I represent Mr. David L. Wilson.
2. Mr. Wilson is a named inventor along with employees of Tropicana Products, Inc. on two patent applicants pending before the USPTO.
3. The attorneys of record for the pending patent applications are the firm of Cook, Alex, McFarron, Manzo, Cummins & Mehler, Ltd., (the Mehler firm).
4. The pending patents currently comprise:
  - a. U.S. Patent App. No. 10 / 342,481 – Commercial Poultry Litter Enhancement with Citrus Sources”
  - b. U.S. Patent App. No. 10 / 671,409 – “Enhancing Commercial Poultry Operations with Litter Having Citrus By-Product”
5. Two patents have issued in the name of the Tropicana employees and David Wilson:
  - a. U.S. Patent 6,523,496 B1 – “Dried Citrus Peel Use in Commercial Poultry Litter,” date of issue February 25, 2003.
  - b. U.S. Patent 6,708,647 B2 – “Commercial Poultry Litter Having Dried Citrus Peel,” date of issue March 23, 2004.
6. Two international patent applications have been filed by Tropicana Products:
  - a. International Patent App. No. PCT/02/20590 - “Dried Citrus Peel Use in Commercial Poultry Litter”  
- From which various National Stage applications have been filed.
  - b. International Patent App. No. PCT/US02/20586 – “Commercial Poultry Litter Enhancement with Citrus Sources”
7. Attorney Raymond Mehler originally received a power of attorney to represent David Wilson before the U.S. patent office on July 13, 2001, a copy of which is attached hereto.

8. Attorney Mehler had previously filed a patent application Serial No. 09/898,997, "Dried Citrus Peel Use in Commercial Poultry Litter" on July 3, 2001, naming Tropicana inventors Mr. James Keithly and Mr. Thomas Taggart and inventor David Wilson.
9. David Wilson is not an employee of Tropicana, has never been an employee of Tropicana, has never assigned any rights to Tropicana Products, and has never promised to assign rights to Tropicana products.

#### **Offending Conduct I**

10. On December 14, 2001, Mr. Mehler and another party he represents, Tropicana Products, Inc, failed to inform David Wilson of the filing of patent application Serial No. 10/017,126, "Dried Citrus Peel Supplement for Use in Commercial Poultry Feed."
11. The patent application names inventors Keithly and Taggart of Tropicana, but does not name David Wilson.
12. In the filing and subsequent prosecution of application Serial No. 10/017,126, Mr. Mehler provided no notice to Mr. Wilson of his actions in prosecuting a patent application for another party (Tropicana Products), in an identical art as Mr. Wilson's application, and an application which directly competes with resources used in David Wilson's application, those resources being citrus bi-product.
13. Mr. Mehler did not provide any opportunity for Mr. Wilson to evaluate his inventive input in the '126 application.
14. Mr. Mehler is the attorney of record for all of the aforementioned applications, and therefore had knowledge of Mr. Wilson and his potential inventorship in each application.

15. Mr. Wilson was unaware of the existence of the competing '126 application, and the Mehler firm provided no notice they were prosecuting the competing '126 application, until the application published at 18 months on June 19, 2003 as U.S. 2003/0113401.
16. David Wilson has reviewed the '126 application and believes he is properly an inventor in that application.
17. During the time period leading to the publication of the '126 application, Mr. Mehler continued to represent David Wilson in the preparation and prosecution of U.S. patent applications, specifically:
  - a. U.S. App Serial No. 09/898,997 - "Dried Citrus Peel Use in Commercial Poultry Litter," filed July 3, 2001, which issued as U.S. Patent 6,523,496 on February 25, 2003; and
  - b. U.S. App. Serial No. 10/341,729 - "Commercial Poultry Litter Having Dried Citrus Peel," filed January 14, 2003, which issued as U.S. Patent 6,708,647 on March 23, 2004.

#### **Offending Conduct II**

18. On January 14, 2002, Mr Mehler filed a continuation in part of the original U.S. application Serial No. 09/898,997 above. The Continuation in Part application was given Serial No. 10/046,473 and titled "Commercial Poultry Litter Enhancement with Citrus Sources."
19. David Wilson **was not a named inventor** in the **continuation in part** application. No declaration or power of attorney (POA) was needed from David Wilson in filing the application because Mr. Wilson was not named as an inventor.
20. The Declaration and POA of the '473 application, a copy of which is attached hereto, was filed on May 15, 2002 by Mr. Mehler and only names Tropicana employees Keithly and Taggart as inventors. Again, Attorney Mehler provided no notice to Mr. Wilson of his actions in prosecuting a directly competing patent application, for another party, in an

identical art as Mr. Wilson's application, and a continuation in part from an application where David Wilson is a named co-inventor.

21. Attorney Mehler did not provide any opportunity for Mr. Wilson to evaluate his inventive input in the '126 application.
22. Mr. Mehler is the attorney of record for all of the aforementioned applications, and therefore had knowledge of Mr. Wilson and his potential inventorship in each application.
23. On June 27, 2002, a PCT application PCT/US02/20586, the first sheet of which is attached hereto, was filed by attorney Mehler which copies the U.S. application Serial No. 10/046,473 above including identical copies of the 49 claims of the '473 application and naming only Tropicana employees Keithly and Taggart as inventors.
24. On January 15, 2003, Attorney Mehler forwarded a letter captioned, "New Continuation U.S. Patent Application," a copy of which is attached hereto. The letter informs Mr. Wilson of the filing of a new continuation application on the same date, an application which names David Wilson as an inventor.
25. The application filed on January 15, 2003 is a continuation of the '473 continuation in part application above that did not name Mr. Wilson as an inventor.
26. The January 15, 2003 letter was the first notice provided David Wilson of the existence of the '473 continuation in part application which Mr. Mehler had been prosecuting for Tropicana over the previous 12 months. The January 15<sup>th</sup> letter does not note or address that David Wilson was not a named inventor in the '473 continuation in part application.
27. The January 15<sup>th</sup> letter included a new combined declaration for the two Tropicana inventors and David Wilson and also forwarded an assignment document for Mr. Wilson's signature. The combined declaration and power of attorney was executed by

Mr. Wilson and forwarded to attorney Mehler on April 25, 2003, a copy of which is attached hereto.

### **Offending Conduct III**

28. An international patent application PCT/US02/20590 was filed by Mr. Mehler on June 27, 2002, the first sheet of which is attached hereto. The '590 PCT application copies the original U.S. application Serial No. 09/898,997 above including identical copies of the 44 claims of the '997 application.
29. Attorney Mehler **failed to inform Mr. Wilson** of the filing of the international patent application PCT/US02/20590 that bears his name as an un-assigned co-inventor.
30. The first notice given by Attorney Mehler to David Wilson, or his counsel, of the existence of a PCT application or of any national stage applications was in an E-mail dated January 20, 2004, a copy of which is attached hereto.
31. On January 20, 2004, Attorney Mehler sent an E-mail to counsel for David Wilson regarding assignment of a Brazilian national stage application. This was the first notice provided David Wilson of the existence of any PCT or national stage applications.
32. In his E-mail Mr. Mehler stated:

“Despite filing via the PCT, Brazil requires Assignment documentation. Normally, this is accomplished by submitting a copy of the Assignment which had been executed in connection with filing the US application. As you know, Mr. David Wilson has not yet executed any Assignments for any subject matter with Tropicana. This requirement causes us to once again raise this issue.”
33. As he acknowledges above, Mr. Mehler clearly knew that David Wilson had not assigned his patent rights as of the filing of the PCT/US02/20590 application.
34. In a letter dated January 28, 2004, a copy of which is attached hereto, the undersigned counsel replied to Mr. Mehler's E-mail questioning the existence of a PCT application

and the failure of attorney Mehler to inform David Wilson of PCT and national stage filings.

#### **Offending Conduct IV**

35. In a teleconference on January 30, 2004, between the undersigned counsel and attorney Mehler, Mr. Mehler stated the reason Mr. Wilson had not been kept informed on the filing of international applications was because Mr. Wilson had not requested to be kept informed about PCT applications.

36. In an E-mail dated October 3, 2002, a copy of which is attached hereto, the undersigned counsel had requested:

“As we discussed during our conference, please also send copies of all papers filed with or received from the PTO in connection with the '997 application or any other application claiming priority to the '997 application to the address below so that they arrive no later than October 11, 2002.”

37. In an E-mail dated April 14, 2003, a copy of which is attached hereto, the undersigned counsel had requested:

“I would like to enter into discussions concerning the assignment of the patent portfolio, including issued U.S. Patent 6,523,496, divisional application your ref number 0876-1121.01 and continuation in part application U.S. 10/046,473 which after a restriction requirement has been filed as continuation application U.S. 10/342,481. Please verify no other applications have been filed which claim priority to the portfolio above.

...

I would also like to reiterate my previous request to be copied on all correspondence filed with or received from the PTO in connection with the portfolio above, or any other application claiming priority to the portfolio, at the address below.”

38. In a letter dated January 30, 2004, a copy of which is attached hereto, the undersigned counsel for Mr. Wilson addressed Mr. Mehler's assertion and provided additional copies of the above E-mails.

### **Offending Conduct V**

39. Most egregiously, the PCT/US02/20590 application filed on June 27, 2002 failed to recognize Mr. Wilson's clear ownership rights, naming Tropicana Products as the sole applicant. Attorney Mehler filed the PCT application naming Tropicana Products as the sole applicant, and therefore the sole owner, using the power of attorney granted by David Wilson in the original U.S. Application Serial No. 09/898,997, and without the knowledge or permission of David Wilson.
40. As acknowledged in his January 20, 2004 E-mail, Attorney Mehler clearly knew David Wilson had not assigned any rights.

### **Offending Conduct VI**

41. The 30 month deadline for entering the national stage in selected countries for the PCT/US02/20590 application occurred on January 3, 2004. As of this date, David Wilson had not been provided notice of the existence of the application, either by Tropicana or attorney Mehler. Mr. Wilson was given no opportunity to participate in the selection of countries to file national stage applications in.
42. In an E-mail on January 30, 2004, a copy of which is attached hereto, and after repeated request by Mr. Wilson's undersigned counsel, attorney Mehler finally forwarded a list of countries where national stage applications had been filed by Tropicana from the PCT/US02/20590 application.

### **Offending Conduct VII**

43. Ten foreign national stage applications had been filed from the PCT application above between December 1, 2003 and January 3, 2004. The national stage applications were filed in Brazil, the EPO, Norway, Israel, Poland, Russia, Australia, New Zealand, Costa Rica, and Mexico.

44. Each foreign application named Tropicana as the sole applicant, again failing to recognize Mr. Wilson's clear ownership rights. All foreign applications were filed without the knowledge or approval of inventor David Wilson, using the power of attorney as granted by Mr. Wilson for the original U.S. application.
45. As he acknowledges in the January 20, 2004 E-mail, attorney Mehler clearly knew that David Wilson had not assigned his patent rights as of the filing of the national stage applications in ten foreign countries; Brazil, the EPO, Norway, Israel, Poland, Russia, Australia, New Zealand, Costa Rica, and Mexico, yet attorney Mehler failed to note Mr. Wilson's ownership interests in the filing of each application with the foreign patent offices by failing to name Mr. Wilson as a co-applicant.

#### **Offending Conduct VIII**

46. On February 25, 2004, the Mehler firm forwarded to the Tropicana Brazilian counsel a letter containing attachments to be filed in the Brazilian patent office, a copy of which is attached hereto. The Mehler firm provided a copy to the undersigned counsel on the same date. The letter purportedly forwarded the executed documents necessary to correct the ownership of the Brazilian application.
47. Incredibly, one of the attachments to the letter was an assignment of David Wilson's Brazilian patent rights to Tropicana products, a copy of which is attached hereto. David Wilson had not signed the assignment. Only the Tropicana inventors Keithly and Taggart had signed the assignment. Later in the day, on February 25, 2004, E-mails by the undersigned counsel and Mr. Wilson's Brazilian counsel to the Mehler firm and the Tropicana Brazilian counsel precluded the filing of the erroneous assignment at the Brazilian patent office. Brazil is the largest producer of citrus bi-product in world.

#### **Offending Conduct IX**

48. In Brazil, the ownership error has been corrected by a simple one-page affidavit drafted by counsel for David Wilson and signed by David Wilson and a representative of



Tropicana Products, Inc., Mr. Lars Johnson. The rapid correction of ownership in Brazil was necessitated by a sixty (60) day from the filing date statutory correction period.

49. The correction of all national stage applications has been the subject of numerous letters between the undersigned counsel for Mr. Wilson and the Mehler firm.
50. In a voice-mail to the undersigned counsel on March 29, 2004, a representative for Tropicana Products, Inc., senior corporate counsel Mr. Lars Johnson, stated that Tropicana refused to "give up any ownership interests" in the remaining foreign applications.
51. In a letter dated April 5, 2004, the Mehler firm received revocations for all PCT and foreign applications. Any powers granted to foreign counsel by the Mehler firm were also revoked on that date. All previous powers of attorney to the law firm of Cook, Alex, McFarron, Manzo, Cummins & Mehler, Ltd granted by David L. Wilson were revoked in a letter dated April 6, 2004. Copies of each letter are attached hereto.
52. A transcript of the March 29, 2004 voice-mail of Lars Johnson was forwarded to attorney Mehler in a letter dated April 9, 2004, a copy of which is attached hereto.
53. The April 9<sup>th</sup> letter again requests affirmative action by the Mehler firm and Tropicana to address the ownership correction of the foreign applications.
54. A response letter from attorney Mehler was received on April 12, 2004 and a second response letter was received on April 15, 2004, copies of which are attached hereto.
55. The April 15, 2004 letter of attorney Mehler purports to explain why David Wilson was given no notice of the PCT and national stage applications by attorney Mehler prior to the E-mail of January 20, 2004.


56. Petitioner disagrees with most of the assertions in the Mehler response letters.

**Offending Conduct X**

57. In a letter dated April 20, 2004, copies of which are attached hereto, the Mehler firm proposed filing papers to "appoint" the undersigned counsel as agent of record for Tropicana Products and David Wilson in the pending U.S. applications.

58. A response letter was forwarded to the Mehler firm later in the day on April 20, 2004, a copy of which is attached hereto, noting the impossibility of such appointment due to the clear conflict of interest which exists between the parties.

Respectfully submitted,

  
E.J. Asbury III  
Registration No. 52,570

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THE LAW OFFICES OF  
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Patents • Trademarks • Copyrights

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April 6, 2004

VIA FACSIMILE & E-MAIL

Raymond Mehler  
Cook, Alex, McFarron, Manzo, Cummings & Mehler, Ltd.  
200 West Adams St  
Suite 2850  
Chicago, IL 60606

Re: Revocation of Power of Attorney in All Matters.

Mr. Mehler,

The relationship between Tropicana Products, Inc and Mr. David L. Wilson has degraded severely over the past years. As early as December 14, 2001, your office and another party you represent, Tropicana Products, Inc, failed to inform David Wilson of the filing of patent application Serial No. 10/017,126, "Dried Citrus Peel Supplement for Use in Commercial Poultry Feed." Prior to that date, on July 3, 2001 you had filed U.S. patent application Serial No. 09/898,997 - "Dried Citrus Peel Use in Commercial Poultry Litter," in which Mr. Wilson is a named inventor, along with Tropicana Products employees Mr. Keithly and Mr. Taggart.

When filing the competing '126 application, you provided no notice to Mr. Wilson of your actions in prosecuting a patent application for another party, in an identical art as Mr. Wilson's application, and an application which directly competes with resources used in David Wilson's application. Additionally, you did not provide any opportunity for Mr. Wilson to evaluate his inventive input in the '126 application. You are the attorney of record for all of the aforementioned application, and therefore had knowledge of Mr. Wilson and his potential inventorship in each application. As you are aware, David Wilson has reviewed the '126 application and believes he is properly an inventor in that application.

Build the Wall Before the Battle<sup>SM</sup>

Mr. Wilson was unaware of the existence of the competing '126 application until the application published at 18 months on June 19, 2003 as U.S. 2003/0113401. During that time period you continued to represent David Wilson in the preparation and prosecution of U.S. and foreign applications, including:

U.S. application serial number 10/046,473 - "Commercial Poultry Litter Enhancement with Citrus Sources," filed January 14, 2002, and;

U.S. application serial number 10/341,729 - "Commercial Poultry Litter Having Dried Citrus Peel," filed January 14, 2003.

As early as December 14, 2002, your office and Tropicana Products, Inc. failed to inform Mr. Wilson of the filing of an international patent application PCT/US02/20590 that bears his name as an un-assigned inventor. The PCT application failed to recognize Mr. Wilson's clear ownership rights, naming Tropicana Products as the applicant. All foreign national stage applications were filed from the PCT application above between December 1, 2003 and January 3, 2004. Each foreign application named Tropicana as the sole applicant, again failing to recognize Mr. Wilson's ownership rights. All foreign applications were filed without the knowledge or approval of inventor David Wilson, using a power of attorney granted for the U.S. applications, and failed to recognize Mr. Wilson's clear ownership rights by naming Tropicana Products as the sole applicant.

As recently as January 20, 2004, you sent an E-mail regarding a Brazilian national stage application. This was the first notice provided David Wilson of the existence of either a PCT or national stage applications. In your E-mail you stated:

"Despite filing via the PCT, Brazil requires Assignment documentation. Normally, this is accomplished by submitting a copy of the Assignment which had been executed in connection with filing the US application. As you know, Mr. David Wilson has not yet executed any Assignments for any subject matter with Tropicana. This requirement causes us to once again raise this issue."

As you acknowledge above, you clearly knew that David Wilson had not assigned his patent interest as of the filing of the national stage applications in ten foreign countries; Brazil, the EPO, Norway, Israel, Poland, Russia, Australia, New Zealand, Costa Rica, and Mexico. Yet you have filed the national stage applications naming Tropicana Products as the sole applicant, using a power of attorney granted by David Wilson, and without the knowledge or permission of David Wilson.

To date, the law firm of Cook, Alex, McFarron, Manzo, Cummins & Mehler, Ltd. (the Mehler firm) has failed to correct Mr. Wilson's ownership interests in the foreign applications filed in the EPO, Norway, Israel, Poland, Russia, Australia, New Zealand, Costa Rica, and Mexico. In Brazil, the ownership error has been corrected by a simple one-page affidavit drafted by counsel for David Wilson and signed by a representative of Tropicana Products, Inc. and David Wilson. The rapid correction of ownership in Brazil was necessitated by a sixty (60) day from the filing date statutory correction period. A representative for Tropicana Products, Inc. has recently refused to correct the ownership of applications in the EPO, and the other remaining foreign jurisdictions.

All previous powers of attorney to the law firm of Cook, Alex, McFarron, Manzo, Cummins & Mehler, Ltd granted by David L. Wilson are hereby revoked. Any powers granted to foreign counsel by the Mehler firm are also revoked. Attached please find three documents of PTO form SB/82 - Revocation of Power of Attorney signed by David Wilson. One form expressly revokes representation in the 10/342,481 application, another in the 10/671,409 application, and the third is a general revocation of all matters. In my letter of April 5, 2004, you received similar revocations for all PCT and foreign applications.

Mr. Mehler, I take this opportunity to remind you of your ethical and professional obligations. You will take no action that affects the rights of David Wilson in any patent application without the express written permission of David Wilson or his appointed counsel. Specifically, under no circumstances will you withdraw any application, or make modifications to any application upon which David Wilson is a named inventor without the express written permission of David Wilson. Please timely copy Mr. Wilson's counsel on all papers regarding

the applications in all countries above. A petition will be promptly filed under 37 CFR 1.182 requesting the remaining U.S. applications be co-prosecuted by Mr. Wilson's counsel and counsel for Tropicana.

Sincerely

A handwritten signature in black ink, appearing to read "E.J. Asbury III", with a stylized flourish at the end.

E.J. Asbury III, LLC

GRANGER COOK, JR.  
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JAMES S. PRISTELSKI  
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ATTORNEYS AND COUNSELORS AT LAW  
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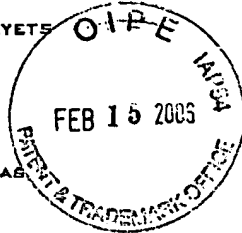
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April 15, 2004

VIA FACSIMILE, EMAIL & MAIL

E.J. Asbury III, LLC  
3330 Cumberland Boulevard  
Suite 500  
Atlanta, Georgia 30339

Re: Citrus Litter Patent Applications

Dear Mr. Asbury:

Further to our letter to you of April 12, 2004, on reviewing it we note we might not have responded directly to other matters raised in your letters of April 5, 6 and 9, 2004 and to which you requested a reply by April 15.

You ask for more information on notification regarding filing non-US patent applications on the citrus litter technology. The very first time any Wilson counsel asked for anything but US patent application information was after we wrote you, on January 20, 2004, about the Brazilian filing. Since then, we have fully complied with all of your requirements, despite your accusations and allegations. All Mr. Wilson or his counsel had to do was ask, in clear and simple language, if Tropicana was going to file or had filed any non-US or foreign or international applications. We do note that once you apparently concluded by January 2004 that asking about non-US filings might fit into your and Mr. Wilson's plans (whatever they are), you found the published PCT applications (both published many months before you acknowledge you knew of them) quickly and without any specific information from us.

You assert that you personally had asked about foreign filings in your emails of October 3 and November 6, 2002. We first observe that Tropicana counsel had minimal contact with former counsel for Mr. Wilson about the patent situation, most of the communications being between the respective business people. For example, Mr. Wilson was informed about the first US application as it was being prepared for filing and he had been given a copy for his review.

E.J. Asbury III, LLC

-2-

April 15, 2004

At this time, Mr. Wilson confirmed what Tropicana had understood from previous discussions with Mr. Wilson, namely that Mr. Wilson agreed that full ownership rights were to be in Tropicana. However, while he eventually signed the Combined Declaration, Mr. Wilson has yet to sign Assignments which had been tendered to his counsel. He stated he would not sign an Assignment "yet", but never said he refused to assign, and this remained our understanding until your letter of January 28, 2004 when you stated that Mr. Wilson "will not assign the U.S. patent to Tropicana".

We do not know when Mr. Wilson changed counsel to you, so we do not know whether you or Mr. Wilson's prior counsel had the obligation to inform him of foreign filing options before July 3, 2002. We first heard from you shortly before your October 3, 2002 email when you informed us you now were representing Mr. Wilson. You then asked to be sent "...copies of all papers filed with or received from the PTO in connection with the '997 application or any other application claiming priority to the '997 application..." First, your use of PTO was understood to be the commonly used abbreviation for the US Patent and Trademark Office. We did not understand this to be a request for any information about any non-US filings, which is reflected in my letter to you of November 5, 2002, which states the '997 application "is the only pending U.S. patent application on which Mr. David Wilson is named as an inventor." Your November 6, 2002 email response questioned the qualifier about Mr. Wilson as inventor but raised nothing about the "only pending U.S. patent application" qualifier. It was not until your letter of January 30, 2004 that you took the position that your October/November 2002 emails were asking about applications other than U.S. applications. We also observe the WIPO application in question was published 16 January 2003. If you had been concerned about a non-US filing before January 2004, as you now state, apparently you did not do even the minimal level of due diligence and check the WIPO web site.

Looking at this now, you or Mr. Wilson's predecessor counsel either overlooked foreign filing possibilities and totally failed to advise Mr. Wilson of his rights, or his counsel did advise him and he did not express any interest. It was incumbent on Mr. Wilson's counsel, not Tropicana or anyone else, to advise Mr. Wilson of the specific due dates. You, Mr. Wilson or his predecessor counsel could have initiated PCT and other possible non-US filings within these time periods. Your accusations do not change the fact that Mr. Wilson, you and your predecessor did not act.

We complied with the requests of Mr. Wilson and his counsel since even before the first US application was filed. Your October 2, 2003 discussions with Mr. Lars Johnson were the first time any counsel for David L. Wilson asked to be informed of developments in the US citrus litter applications before papers are filed in the applications. We have complied fully. This is the subject of my October 2, 2003 letter to you. We did have a concern about this arrangement due to your and/or Mr. Wilson's slow response. Here are a few examples.

1. In the divisional application, No. 10/341,729, we had sent you a Combined Declaration with Power of Attorney on January 14, 2003, the day the application was filed, in view of amendments made at that time. This was accompanied by an Assignment. We asked for



E.J. Asbury III, LLC

-3-

April 15, 2004

these to be executed. When we reported the Office Action and Amendment in our letter to you of August 27, 2003, we reminded you. No documents ever were received, and the patent issued without a supplemental Declaration ever having been filed.

2. In this 10/341,729 application, we reported the Notice of Allowance to you on October 8, 2003, asking for your or Mr. Wilson's input concerning the Allowance or the allowed claims. While you eventually sent a check and approved payment of the fees in late November, you never gave any input on the allowed application, which issued on March 23, 2004 as No. 6,708,647.

3. On February 13, 2004, we sent you by Federal Express an unfiled patent application (0876-0218) which Tropicana considered ready for filing and in respect of which Mr. Wilson was invited to add any input. You immediately said you would have input, but none was received. We then sent you a reminder on March 22 and sent you an electronic version which you requested for the first time on that date. No input has been received from you or Mr. Wilson.

4. On multiple occasions, we have asked Mr. Wilson's counsel for input about any art known to Mr. Wilson which could be relevant to patentability so that an Information Disclosure Statement could be filed. Nothing ever has been received back. If in fact Mr. Wilson or his agents are aware of pertinent prior art information which was not brought to our attention, all of these U.S. patents could be found to be unenforceable. We have fulfilled our duty to inquire of Mr. Wilson, so if there is a problem, it will be due to Mr. Wilson's lack of attention or failure to cooperate.

5. On occasions in addition to that noted above, you and I discussed by telephone the various citrus litter US patent applications, and I explicitly asked for any input from you or Mr. Wilson concerning the citrus litter US patent applications, particularly their claims. Never did we receive any suggestions.

You allege Tropicana has "recently refused to correct the ownership of applications in the EPO, and the other remaining foreign jurisdictions." If this is what you understand, you are wrong. It is you and Mr. Wilson who have not cooperated fully and have unduly complicated the efforts to complete the corrections of records in the respective patent offices. See our April 12, 2004 letter and the numerous emails, papers and documents which we have sent you this year.

Other matters in your April 6, 2004 letter have been addressed before. Concerning the citrus feed supplement, our letter of October 24, 2003 asked for concrete information contrary to Tropicana's conclusion that Mr. Wilson is not a co-inventor of that technology. If he had invented any of the claimed feed supplement technology, he did not pass it on to Tropicana as far as we are aware. Your refusal to provide any information has made impossible any reassessment of inventorship of the feed supplement technology and leads us to the conclusion that Mr. Wilson is not a coinventor.

E.J. Asbury III, LLC

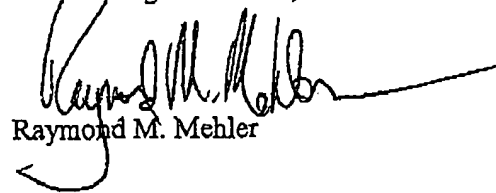
-4-

April 15, 2004

From Tropicana's perspective, Mr. Wilson and/or his counsel have been uncooperative. Despite this, Mr. Wilson has received benefits due to the very activities about which you continue to complain. Mr. Wilson has not been harmed in any way, at least not by Tropicana.

Yours very truly,

Cook, Alex, McFarron, Manzo,  
Cummings & Mehler, Ltd.



Raymond M. Mehler

RMM/vk  
Enclosures

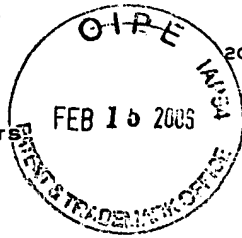
cc: Lars S. Johnson, Esq. (via email)  
Mr. Rocco Simonetta (via email)

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October 24, 2003

VIA FACSIMILE

E. J. Asbury III, LLC  
3330 Cumberland Boulevard  
Suite 500  
Atlanta, Georgia 30339-5985

RE: U.S. 2003/0113401 A1 –  
“Dried Citrus Peel Supplement For Use In Commercial Poultry Feed”

Dear Mr. Asbury:

This is in response to your letter of October 21, 2003 concerning the feed supplement invention which is claimed in the published US patent application identified above.

Rest assured that the question of any possibility that Mr. David Wilson is an inventor of any aspect of this feed supplement invention was carefully and thoroughly investigated internally prior to the filing of this application. When you first raised this during a recent telephone conversation, I had requested you to provide any concrete information that you or Mr. Wilson might have which in fact shows that Mr. Wilson was a coinventor of the feed supplement invention, keeping in mind the state of the prior art especially that of including citrus byproducts in animal feed. Since you have provided nothing to us to indicate that the conclusion of our internal investigation was in any way erroneous, we understand no such concrete information exists, and we will not be adding Mr. Wilson as a coinventor of the feed supplement invention.

You have mentioned the citrus byproduct poultry litter filings for which Mr. Wilson is a named inventor. As noted in my letter to you of October 8, 2003, application Serial No. 10/341,729 has been allowed, and the issue and publication fees now are due. I have been requested by Tropicana to ask for Mr. Wilson's payment of one half of these fees. Please send

E. J. Asbury III, LLC

-2-

October 24, 2003

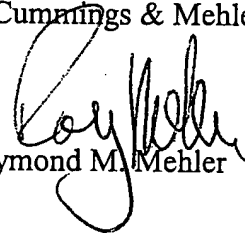
me a check in the amount of \$815 at your early convenience and no later than November 26, 2003.

In addition, we remind you that we are awaiting return of the signed Terminal Disclaimer which we had sent you in another citrus byproduct poultry litter US application. This is Serial No. 10/342,481, as reported to you by our letter of October 6, 2003. I understood from our telephone conversation that you agree with this approach in responding to the outstanding Office Action, but the executed Terminal Disclaimer does not seem to have been received here as of yet. Inasmuch as the original term for responding to the Office Action was October 16, 2003, we would appreciate receiving this as soon as possible. Failing this, we will incur additional late charges. As you know, a fax of the executed Terminal Disclaimer would be accepted.

We look forward to receipt of the check and of the executed Terminal Disclaimer.

Yours very truly,

Cook, Alex, McFarron, Manzo,  
Cummings & Mehler, Ltd.



Raymond M. Mehler

RMM/vk

## Send Confirmation Report

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Page 1

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FAX: 404-795-1025 PHONE: 770-933-6850

DATE: October 24, 2003

FROM: Raymond M. Mehter

REFERENCE: David L. Wilson - Tropicana Products, Inc. - U.S. Patent Filings

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TO: E. J. Asbury III, Esq.

NUMBER OF PAGES  
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October 21, 2003

**VIA FACSIMILE & MAIL**

Raymond Mehler,  
Cook, Alex, McFarron, Manzo, Cummings & Mehler, Ltd.  
200 West Adams St  
Suite 2850  
Chicago, IL 60606

Re: U.S. 2003/0113401 A1 - "Dried Citrus Peel Supplement For Use In  
Commercial Poultry Feed"

Mr. Mehler:

Further to our conversations during the week of October 6, 2003, Mr. David Wilson has reviewed the recently published utility application US2003/0113401 A1 - "Dried Citrus Peel Supplement For Use In Commercial Poultry Feed," and believes that his inventive input is present in that application and claims as published. As you are aware, Mr. Wilson is a named inventor, along with Mr. Keithly and Mr. Taggart in U.S. Patent 6,523,496 - "Dried Citrus Peel Use in Commercial Poultry Litter," U.S. application serial number 10/341,729 - "Commercial Poultry Litter Having Dried Citrus Peel," U.S. application serial number 10/342,481 - "Commercial Poultry Litter Enhancement With Citrus Sources," and a U.S. patent application filed on September 25, 2003, "Enhancing Commercial Poultry Operations With Litter Having Citrus Byproduct." It is noted that you are the attorney of record for all of the aforementioned applications and issued patents, and therefore have knowledge of Mr. Wilson and his potential inventorship in each application.

Build the Wall Before the Battle<sup>SM</sup>

Raymond Mehler,  
October 21, 2003  
Page 2

As you have failed to make any inquiry with Mr. Wilson concerning his contribution to the concepts disclosed in the '401 application, either prior to the filing of the application on December 14, 2001, nor during the pendency of the application prior to the 18 month publication on June 19, 2003, Mr. Wilson has not had knowledge of the existence of the '401 application prior to publication. Mr. Wilson strongly believes he is an inventor in the '401 application based upon his disclosures to Tropicana of the concepts embodied therein. Accordingly, please promptly add Mr. David L. Wilson as an inventor in application number US2003/0113401A1. I would greatly appreciate a written response by October 24, 2003, regarding Tropicana's position in this matter.

Yours Very Truly,

A handwritten signature in black ink, appearing to read "E. J. Asbury III", with a stylized flourish at the end.

E. J. Asbury III, Esq.